

LEGAL & INSURANCE REVIEW

Commentary by Andrew Choy, Group General Counsel



LEGAL & INSURANCE HIGHLIGHTS FYE 2022



Completion of contract negotiations for FPSO Atlanta and FPSO Maria Quitéria.



Successful procurement and placement of Constructive All Risks insurance for FPSO Maria Quitéria.



Internal restructuring of Legal Department in alignment with growing business needs.



Registration of the Group's first trademark 'Hydroglyder' to Yinson GreenTech – the first of various trademark names to be registered to the brand to reflect the division's various business sectors.



19 internal legal awareness webinars conducted by in-house legal team to raise employee awareness on legal topics.

1,357 employees attended.



Successful strike-off of unwarranted lawsuit commenced by Globalmariner Offshore Services Sdn Bhd.

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LEGAL & INSURANCE LANDSCAPE

The global legal community was not spared from the effects of Covid-19, with one of the key questions arising on whether force majeure may be invoked to relieve parties from performing its obligations due to the pandemic. The impact of the pandemic on businesses, especially those that rely on international trade, has had a severe effect on commercial contracts and the hampering of contractual obligations on parties. The cascading effect of its interruption to businesses only serves to complicate matters even further, as would be the disparity in the treatment of such interruption in relation to Governmental agencies, clients and contractors respectively.

Our legal team continued to navigate the uncharted territories brought about by the hitherto unprecedented pandemic. It is anticipated that the challenges brought about by the pandemic are expected to grow even as the global economy gradually regains lost ground, reviving contract negotiations that had been put on hold and giving rise to fresh rounds of negotiations that need to be adapted to a different post-pandemic environment. The changing environment is causing businesses to reassess their strategic priorities, necessitating legal advice on how to manage their respective unique set of risks and opportunities.

The insurance market has endured some of its most turbulent times in recent years, largely driven by natural catastrophe events. This was compounded by back-to-back years of significant loss of activity from 2017 to 2021, as well as disruptions to the global economy caused by the Covid-19 pandemic. This has led to general market hardening, with increases in insurance rates globally and across most classes of insurances. Other dominant themes shaping the global marine insurance industry include extreme weather conditions, rapid technological developments resulting in growing cybersecurity concerns and new regulatory regimes such as IMO 2020.

In keeping with our time-honoured contracting strategy, we continue to engage with both our clients and contractors by way of honest and friendly negotiations, in a solutions-oriented manner and by the avoidance of unwarranted ultimatums. We balance our considerations in relation to risks and rewards in a careful and measured manner, never losing sight of the objectives of contract negotiations, and never failing to take into account the interests of our clients and contractors.

YEAR IN REVIEW

Contract negotiations

FYE 2022 has been an incredibly busy year for Yinson's Legal & Insurance Department. We successfully closed contract negotiations for FPSO Maria Quitéria with Petrobras, with firm contracts signed, sealed and delivered. The successful award is a testament to the adaptability and commitment of both Yinson and Petrobras, as negotiations encountered many challenges and several postponements, caused in part by the pandemic and volatile oil prices. Together with Petrobras, we are pleased to arrive at a robust contract that meets our shared goals for profitability, productivity and sustainability.

Our second major contract signed was with Enauta for FPSO Atlanta. The FPSO Atlanta project has proven to be a complex legal transaction, at once challenging and rewarding. Our Legal Department had to dig deep into our capabilities and knowledge to structure the transactions involved, and in doing so, we churned out novel solutions hitherto unexplored. In a relatively short time, we were able to overcome all the challenges posed by this project, and the result was a transactional triumph for all parties involved.

The FPSO Maria Quitéria is Yinson's second project award with Petrobras, after FPSO Anna Nery and FPSO Atlanta, and is the third project award in Brazil for Yinson. With this, Yinson has made a firm inroad into Brazil, fulfilling our objective of making Brazil one of the leading jurisdictions in our business endeavours.

Insurance update

We successfully placed billions of dollars of FPSO exposure through Construction All Risks ("CAR") insurance for the FPSO Maria Quitéria project, at competitive premiums even in the current hardening market within an unprecedented short period of time. All participating insurers in this CAR programme are rated by S&P as 'A-' at a minimum, which is equal to or in excess of contractual requirements, which translates to highly favourable terms. CAR insurance is a very important tool to mitigate project cost exposures in the event of any major unfortunate incident during the construction phase including commissioning & testing in the field. It covers all perils to which the interest is exposed, unless specific exclusions are stated. It insures the physical damage or loss plus liability arising out of the project works.

Despite rate increases in the insurance market, Yinson's fleet continues to enjoy competitive rates. This is due to Yinson's growing fleet profile, good management and operational reputation and strong relationships with insurance partners such as brokers and market leading insurers with strong credit ratings. We have also regularly assessed our risk exposures and determined mitigation measures by insurance, if any, for consideration.

Managing Covid-19-related legal risks

During the financial year, the Legal & Insurance Department proactively looked into the best way to manage the risks of contracting parties in light of the pandemic. Applicable risks for us as a contractor include project schedule delays and cost increases; while for us as a client, risks include unfavourable variation orders and invocation of force majeure by vendors who face difficulties meeting their deliverables.

Our strategy adopted on force majeure-related provisions have evolved from excluding Covid-19 in totality as a force majeure event to provisions relating to unforeseeable impact from the consequences of implementation of Covid-19 measures. Further, and notwithstanding that communicable diseases have recently been excluded from International Group P&I Club pool coverage, we are pleased to make the observation that our renewal with Skuld P&I Club has put us in a substantial position by having the reinstatement of such exclusions of up to USD10 million.

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Intellectual Property Initiative

At Yinson, we recognise the importance of Intellectual Property ("IP") as a valuable company asset. In this connection, we are planning to undertake an IP Initiative across the Group.

This initiative will have a positive impact on the Group, by turning intangible assets into tangible results. Key objectives include the increase of Yinson's valuation, protection of Yinson's reputation and goodwill, possible new revenue stream through licensing, enhancement of Yinson's reputation as an innovative company, obtaining competitive intelligence on key competitors via IP data, and deterrence of competitors from infringing any IP rights contained within Yinson's products and services.

Under the IP Initiative, we plan to conduct an awareness programme involving all offices on the importance of IP as well as an identification and inventory of relevant IP assets. Key elements of the IP Initiative shall comprise:

- 1) Identification of IP
- 2) Securing of IP
- 3) Registration of IP
- 4) Protection of IP
- 5) Commercialisation of IP

In FYE 2022 we successfully registered the Group's first trademark, 'Hydroglyder', to Yinson GreenTech – the first of various trademark names to be registered to the brand to reflect the division's various business sectors.



Business Review: Green Technologies, pg 111

Strategic restructuring of legal department

To better serve the Group in light of our rapid expansion into new businesses and geographical territories, our Legal Department has been expanded and restructured in accordance to key areas of operation. The expansion and restructuring are part of the Department's evolution towards becoming an independent cost centre, with the objective of providing complete legal services to the Group's business units. We have worked on bringing in the requisite skillsets into the team, with the aim of relying even less on external support.

In this connection, the position of the Head of Legal was created, and that designation has been further demarcated into three regions, namely Head of Legal of the Americas, Head of Legal of EMEA (Europe, Middle East & Africa) and Head of Legal of Asia-Pacific. These three new designations are complemented by the Head of Legal (Corporate Finance).

Improving stakeholder awareness & engagement

In September 2020, the Yinson's Legal Department initiated a series of webinar sessions for Yinsonites and contract personnel on topics that relate to legal issues faced every day in our business. Called Legal Awareness Webinars, or L.A.W, the webinars present legal concepts in everyday language, allowing Yinsonites to be better equipped with new knowledge to help them understand and appreciate the business better, especially how Yinson aims to manage risks through application of robust legal practices. The webinars are held monthly, with each member of the Legal Department taking turns to present.

LEGAL AWARENESS HIGHLIGHT

Monthly L.A.W. webinars conducted for all employees

19 WEBINARS CONDUCTED | 1,357 ATTENDANCE OVERALL | 98% POSITIVE FEEDBACK FROM ATTENDEES

- September 2020 – Force Majeure: The English Treatment Of A French Superior Force
- October 2020 – Overview Of Islamic Finance, An Alternative To Conventional Financing
- November 2020 – Variation Orders: Change Is Inevitable, A Successful Outcome Is Optional
- December 2020 – Understanding Termination Issues In A Contract
- January 2021 – Intellectual Property Management In Yinson
- February 2021 – Marriage In Business: Joint Venture
- March 2021 – An Overview Of Arbitration In Various Jurisdictions
- April 2021 – Delay And Liquidated Damages In Contracts
- May 2021 – An Overview Of Typical Insurances placed for Yinson's Offshore Projects.
- June 2021 – Case Studies And Overview On Anti-Bribery Management System
- July 2021 – Will Drafting
- August 2021 – Shut Up! Legally Speaking – Libel And Slander In The Internet Age
- September 2021 – EPC[I] [C] v L&O: What's Really The Difference Contractually?
- October 2021 – Introduction To Secured Lending
- November 2021 – Cybersecurity
- December 2021 – Expert Witness Testimony
- February 2022 – Employment Rights 101
- March 2022 – Look Ma, No Hands! Autonomous Driving And Its Legal Challenges
- April 2022 – The Personal Information Protection Law of China

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To improve internal stakeholder management, we introduced an electronic feedback form with the objective of continual improvement in the provision of our legal and insurance services to the Company as a whole. This new introduction has been greeted with warm reception, and participation has been very encouraging. Both positive and negative comments were taken onboard, round discussions held with participants, and actions taken as an output of all such comments made. This is very much in line with Yinson's core value of 'openness'.

Engaging external professional associates is part of how Yinson operates. We have a core in-house legal and insurance team, supported on the peripheral by external firms and consultants, including in the legal and insurance sectors. In FYE 2022, we enhanced our engagement with external professional associates to include a comprehensive onboarding process; and developed a framework for engagement during the tendering process and direct selection process. We believe that these engagements will help both parties to understand respective concerns, expectations and abilities to add value, leading to better outcomes for sustained value creation.

Another highlight for the year was Yinson's participation in a closed door, deep dialogue with Singapore Minister of State for Trade & Industry Alvin Tan on the business trends, opportunities and challenges companies face while operating in Africa's oil & gas sector. Yinson was joined by other leading industry representatives in the session, which was organised by Enterprise Singapore.

GMOS lawsuit successfully struck off

On another note, we are pleased to have successfully struck off the lawsuit commenced by Globalmariner Offshore Services Sdn Bhd ("GMOS") summarily. On 6 March 2020, GMOS commenced an action against various Yinson companies and 9 other parties ("Defendants") in the Kuala Lumpur High Court by way of Suit No. WA-22NCVC-150-03/2020 dated 3 March 2020 ("Suit"). The Writ of Summons, together with the Statement of Claim in the Suit was ordered to be struck out with costs by an Order of Court dated 31 March 2021, pursuant to a successful application made by the Defendants (which includes Yinson) and all avenues of appeal concerning the order made against GMOS have been completely exhausted.

Charter contracts

Charter contracts require special mention, given their level of complexity and sophistication within the upstream sector.

The terms and conditions of Yinson's charter contracts are not linked to macro-economic factors or conditions beyond the control of Yinson such as the price of oil & gas and/or the performance of the reservoir on which the relevant production asset is operating.

Charter rates will typically cover the cost of the capital expenditure of the project, including engineering, procurement, construction and installation (EPCI), financing costs as well as contributing to commercially acceptable returns to the Group over the tenure of the firm charter period. The Group considers any revenue earned during the option period as surplus revenue beyond the capital expenditure and projected returns of the project.

Typically, assets are owned by Yinson, and upon termination of the relevant charter contract, there remains a possibility of redeployment of the asset to another offshore oil field.

Given the bespoke nature of the assets, all charter contracts are typically negotiated to ensure that the risks of termination by charterers are minimised and termination can occur only in highly specific and prescribed circumstances. In the event a charter contract is prematurely terminated by the charterer at their convenience, there is a corresponding obligation on the part of the charterer to pay Yinson compensation in the form of a pre-agreed Early Termination Payment ("ETP"). This is so even in the case of termination due to a default on the part of Yinson, albeit in more limited circumstances, and at discounted ETPs. The ETP or discounted ETP payments are normally derived based on *inter alia*, the present value of lost future revenue and contractually structured as lump sum payments payable within a stipulated period post termination.

Where applicable, charter contracts are further supported by a charterers' parent company guarantees or undertakings to guarantee the obligations of the charterers over the course of the charters' firm and option periods. This includes the payment of ETPs.

CLOSING REMARKS

As a business, we rely on the robustness of our contracts and the strength of our legal competencies to minimise contract and legal risks. We believe this sets a crucial foundation that safeguards the sustainability of our business, allowing us to continue generating value for all our stakeholders for many years to come.